IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WA.No. 341 of 2007(E)

AGAINST THE JUDGEMENT IN OP.34319/2002 Dated 01/06/2006
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APPELLANTS: RESPONDENTS IN THE OP
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1. STATE OF KERALA, REPRESENTED BY
   CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. CHIEF CONSERVATOR OF FORESTS
   (ADMINISTRATION), THIRUVANANTHAPURAM.

3. CONSERVATOR OF FORESTS,
   CENTRAL CIRCLE, THRISSUR.

4. DIVISIONAL FOREST OFFICER,
   MALAYATTOOR.

BY GOVERNMENT PLEADER SRI BENNY GERVASIS

RESPONDENTS: PETITIONER IN THE OP
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1. P.R.SOMASUNDARA PANICKER,
   FOREST GUARD, KURISUMUDI FOREST STATION,
   MALAYATTOOR P.O.

2. T.A.GOPI,
   FOREST GUARD, SPECIAL FOREST PROTECTION FORCE,
   KODANAD RANGE, KODANAD P.O.

ADDL. 3. OMANA GOPI, THOMBRAKUDY HOUSE,
   KONBANAD P.O., PANAMKUZHY.

" 4. RATHI T.G., -DO- -DO-

" 5. RAGIVE T.G., -DO- -DO-

" 6. REKHA T.G., -DO- -DO-

(ADD.R3 TO R6 ARE IMPLEADED AS PER ORDER DTD.6/3/2007 IN I.A.NO.144/2007)

R1 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.PETER JOSE CHRISTO

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

W.A.NO.341 OF 2007

Dated this the 26th day of March, 2007

JUDGMENT

Raman,J.

This is an appeal by the State against the judgment in O.P.No.34319/2002. Respondents herein are the petitioners in the said original petition. Respondents/petitioners were appointed initially as Forest Watcher in the Kerala Forest Department. Subsequently, before completion of 10 years as Forest Watcher, they were transferred and appointed as Forest Guard in the Kerala Forest Subordinate Service. It is alleged that the scale of pay of the Forest Guard is higher than the scale of pay of Forest Watcher. If so, though the appointment of Guard is by way of transfer, it involved promotion. The question that arose for consideration is as to whether in such circumstances, respondents/petitioners are entitled for second higher grade promotion on completion of 8 years as Forest Guard. The learned Single Judge, following the dictum laid down by another Division Bench of this Court in W.A.No.1147/98, held that even though the writ petitioners were appointed by transfer as Forest Guards, it involved promotion and hence by virtue of Clause 5(1)(b)(2)(ii) of Ext.P1 they will

be entitled for second higher grade promotion on completion of 8 years of service as Forest Guards. The appellants would contend that by virtue of Clause 5(1)(b(2)(ii) when there is an appointment by transfer, the transfer posts would also be treated as an entry cadre and if so, they will be entitled for first grade promotion only on completion of 10 years of service in the transfer post. We are unable to accept this contention. It is true that an appointment by transfer may nor may not involve promotion; but in this case the post which they were appointed by transfer carried higher grade promotion. If so, they will not be entitled to the first higher grade promotion on completion of 10 years of service in the entry cadre, namely, Forest Watcher. But the mere fact that the writ petitioners are not entitled for the first higher grade promotion will not deprive them of their right to get the second higher grade promotion, in view of Clause 5(1)(b)(2)(ii) of Ext.P1.

We agree with the view expressed by the learned Single Judge. There is no merit in this appeal. It is accordingly dismissed.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.